



Ninety-Ninth Legislature - First Session - 2005
Committee Statement
LB 673

Hearing Date: February 22, 2005

Committee On: Agriculture

Introducer(s): (Louden, Aguilar, Baker, Combs, Erdman, McDonald, Smith, Stuthman, Fischer)

Title: Adopt the Black-Tailed Prairie Dog Management Act

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

6 Yes Senator(s): Kremer, Wehrbein, Burling, Cunningham, Erdman, Fischer

No

Present, not voting

2 Absent Senator(s): Chambers, Preister

Proponents:

Senator LeRoy Louden

Michael Kelsey

Thorpe Thompson

Gary Fisher

Keith Zimmerman

Jake Wasserburger

Joe R. Nunn

Lee Garrett

Joe Falkenburg

Emiel Raben

Representing:

Introducer

Nebraska Cattlemen

Farm Bureau

Northwestern Nebraska High Country and Dawes County

Sioux County Commissioners

Box X Ranch

Running Water Ranching Coalition

Garrett Farms

Ranching Industry

Sioux County Commissioners Fact Committee

Opponents:

Larry Dix

Michael Jacobson

Representing:

Nebraska Association of County Officials

Self

Neutral:

Buffalo Bruce

Representing:

Western Nebraska Resources Council

Summary of purpose and/or changes:

LB 673 imposes an affirmative duty upon landowners and managers to prevent uncontrolled spread of colonies of black-tailed prairie dogs. The bill further assigns duties and authorities

upon county boards of counties where black-tailed prairie dogs are present, and the Department of Agriculture, to carry out a program of black-tailed prairie dog management modeled closely after the Noxious Weed Control Act. The technical elements of the bill as introduced include the following:

Designation, definitions and legislative findings:

- Section 1 names sections 1 to 12 the Black-Tailed Prairie Dog Management Act
- Section 2 defines key or recurring terms used throughout the act. Defined terms “buffer zone” and “managed black-tailed prairie dog colony” are key terms as they establish standards for measuring compliance with the duties prescribed elsewhere in the Act.
- Section 3 States legislative findings recognizing both nuisance and beneficial impacts of black-tailed prairie dogs and benefits in properly managed prairie dog colonies.

Duties of Landowners, counties and the Director of Agriculture:

The remainder of sections 1 – 12 assign specific duties to landowners, and, like the noxious weed control program, assigns primary responsibility to county governments for prairie dog management with Department of Agriculture oversight as follows:

- Landowners
 - Section 4, subsection 1 imposes an affirmative duty upon persons owning or controlling land to manage black tailed prairie dog colonies to prevent the spread within designated distances of neighboring property -- 1 mile if the colony is 10 acres or more, and ½ mile if the colony is less than 10 acres in area.
 - Section 9 imposes the financial obligation for managing prairie dogs on land owned or controlled by state and local governmental entities upon the governmental entity out of funds appropriated to the agency.
- County Governments
 - Section 4, subsection 2 -- declares county boards are responsible for administering prairie dog management under the act at the local level, with authority to determine and impose fees for such purpose
 - Section 5, subsection (1)(a) -- specifically vests county boards of counties where prairie dogs are present and the Director of Agriculture with the shared duty to enforce and carry out the act
 - Section 5, subsection (2) -- enumerates specific duties and authorities of counties in carrying out their responsibilities under the act, including
 - A duty to establish a coordinated program for prairie dog management and management activities consistent with regulations of the Director
 - Authority to cooperate with other entities and to appropriate and expend funds for materials and equipment
 - Authorizes a right of entry of a county board or its authorized agents upon land to perform prairie dog management activities under the act without liability for trespass or damage if reasonable care is exercised.
 - Section 7 authorizes two types of notices, general and individual, that may be utilized by counties to notify landowners of prairie dog management responsibilities and

provide additional authorities to secure landowner compliance, or to carry out control activities, if a landowner is uncooperative.

- Subsection 1(b) provides for newspaper publication of general notices, conforming with regulations of the Director, on or before May 1 of each year. General notices serve public with notice of duty to manage prairie dogs but lack of publication of general notice is expressly declared not to relieve landowners of the duty to manage prairie dogs

Subsection 1(c) authorizes counties to serve either or both of two types of individual notice. Either notice to state:

- that the county has determined from information and its investigation the existence of "unmanaged prairie dog colony" on identified property
- prescribe recommended management method but that alternative management method approved by board may be used
- date of notice
- that landowner has 60 days from date of notice to bring colony under management.

Individual notices differ by notification of remedy county may employ:

A: That if landowner fails to comply, county may enter property and perform management measures and that cost county incurs is at expense of landowner and is lien against property recoverable if necessary by special assessment against property.

B. That if landowner fails to comply, landowner is subject to a fine of \$100 / day up to maximum of \$1500. This notice also includes disclosure that landowner is entitled to request hearing before county board within 15 days of notice date to challenge county finding that an unmanaged prairie dog colony exists.

- Subsection (2) requires counties to hold an informal public hearing if requested by the landowner served with notice.
- Subsection (3) authorizes two types of enforcement actions by counties if a landowner fails to timely comply with individual notice, or to request a hearing.
 - a) seek county attorney prosecution for non-compliance as an infraction punishable by a fine of \$100 / day for each day of violation up a maximum of 15 days.
 - b) Cause management activities to be performed and notify landowner and the county treasurer of the cost of control activity. If the landowner fails to reimburse the county board within two months, the county board shall certify the unpaid obligation, which becomes a lien against the property and collected as a special assessment levied upon the date of the management action.
- Clarifies that counties may pursue any available civil remedy apart from levy collection to recover the obligation, but pursuit of alternative means of collecting debt does not preclude satisfaction by tax foreclosure. Any amounts collected are to be deposited in the county's prairie dog management fund, if one exists, or to the county general fund.

- Section 8 authorizes counties to establish a separate black-tailed prairie dog management fund for receipts and disbursement in carrying out management activities. This section further assigns a duty for counties to determine the acreage of prairie dog colonies present in the county and annually prepare a budget for management activities.
- Section 11 requires county boards to receive timely filed protests by landowners contesting the amount of any charge assessed against them under the Act, and to conduct a hearing. Landowners may appeal any adverse ruling in accordance with the Administrative Procedures Act.
- Director of Agriculture
 - Section 4, subsection 3 -- assigns a duty to the Director to cooperate with the Animal & Plant Health inspection service to monitor prairie dog populations on public and private lands
 - Section 5, Subsection (1)(a),(b) & (c) -- specifically vests the Director with a shared duty with county governments to enforce and carry out the act and enumerate specific duties and authorities of the Director, including:
 - To investigate and monitor for populations of prairie dogs and require reports from counties regarding prairie dogs
 - To cooperate with state and federal agencies to carry out duties, to procure materials and equipment, and to employ personnel
 - Authority to determine county non-compliance with management responsibilities, notify counties of deficiencies, and to initiate legal action to compel compliance
 - Section 6 authorizes the Director to convene an advisory committee consisting of prescribed membership
 - Section 10 authorizes the Director to utilize funds from the Animal and Damage Control Cash Fund to carry out its responsibilities under the act. A harmonizing amendment is made to §81-2,236 by section 13 of the bill to specifically authorize cooperation with APHIS for control and management of black-tailed prairie dogs and Section 14 of the bill amends §81-2,237 to require sufficient appropriation to the Animal Damage Control Fund to assure that \$100,000 are available in the program annually.

Miscellaneous

- Section 12 authorizes legal action for failure to comply with the Black-Tailed Prairie Dog Management Act.

Explanation of amendments, if any:

The committee amendments strike the original sections and become the bill. The amendments make several substantive and technical revisions, most notably providing that the authorities under the act are permissive authorities that may be assumed by counties rather than mandatory duties assigned to counties where black-tailed prairie dog colonies are present. Prairie dog management objectives are more objectively and narrowly defined as confining prairie dog colonies to property where they occur to reduce the burdens on counties in determining when enforcement intervention is necessary or required. The amendments also reduce the duties of the Director of Agriculture to a largely advisory role although the amendments retain duties of the Director to promulgate rules to guide and govern county implementation of the act. Additional uses of the Animal Damage Control Fund are authorized

to enable the Department greater ability to devote resources from the fund for specific animal damage control problems and to provide direct aid to counties to assist with implementation of county management plans. A number of technical and clarifying changes are made throughout in retained provisions, particularly in the serving and enforcement of individual notices.

The technical changes to the bill as revised by the Committee amendments include the following:

- The amendment omits the definitions of a “buffer zone” and “managed black-tailed prairie dog colony” from the original bill. A definition for “managed colony” replaces both terms and is defined to mean a colony confined to land owned by one person. Remaining defined terms for colony, county board, Director, and person are carried over to the amendment.
- Authorizes any county to adopt a prairie dog management program consistent with rules and regulations of the Director Agriculture. Counties that have adopted a management plan assume authorities and duties prescribed in remainder of the Act, including:
 - Authority to cooperate with USDA & other entities and to appropriate and expend funds for personnel, materials and equipment
 - Examine property within county and right of entry to perform prairie dog management and assessment activities
 - Issuance of general and individual notices
 - Request and receive funds from the Animal Damage Control Cash Fund
 - May establish separate black-tailed prairie dog management fund
- Assigns specific duties to the Director of Agriculture but Director’s duties become largely advisory. Does not retain shared enforcement and oversight responsibilities found in introduced bill. Specific duties and authorities include:
 - Adopt rules and regulations as necessary to guide and govern counties regarding:
 - a) development of county management plans
 - b) prairie dog management methods
 - c) issuance of general notices, and
 - d) procedures for counties to request assistance from ADC fund
 - Establish expertise on prairie dogs
 - Cooperate with other state and federal agencies and other persons to carry out act
 - Expend funds for personnel, material and equipment
 - Right of entry to perform prairie dog management and assessment activities
 - Convene an advisory committee to include state and federal entities with land management responsibilities, representative of agriculture, environmental groups, IANR, county governments and other appropriate persons.
- An affirmative duty of landowners to manage colonies is revised to clarify that the duty is to prevent expansion to adjacent property and applies only to persons who own or control land within a county that has adopted a prairie dog management plan
- Retains provisions for county publication of general notices
- Revises provisions pertaining to service and enforcement of individual notices with the following specific prescribed provisions.

- Individual notice is served when county has reason to believe that a landowner has allowed a prairie dog colony to expand to adjacent property in place of the introduced bill's more ambiguous requirement that a county determine that a prairie dog colony is "unmanaged" as defined in the introduced bill.
- Retains provisions for serving either or both of two types of individual notice with the following statements:
 - that the county has information indicating the presence of "unmanaged" prairie dog colony on identified property
 - recommended management methods but that alternative management method approved by board may be used
 - date of notice
 - that state law imposes duty of landowners in counties that have adopted a prairie dog management plan to prevent expansion of colonies to adjacent property
 - landowner has 60 days from date of notice to employ management interventions. If services for such are not available to comply within 60 days, notice may be satisfied by providing evidence that landowner has arranged for management interventions to be taken when available.
 - That landowner may request hearing before the county board by written request received within 15 days of date of notice
- Individual notices differ by notification of remedy county may employ:
 - A: That if landowner fails to comply, county may enter property and perform management measures and that cost county incurs is at expense of landowner and is lien against property recoverable if necessary by special assessment against property.
 - B. That if landowner fails to comply, landowner is subject to a fine of \$100 / day up to maximum of \$1500.
- Retains right of landowner to request a hearing before the county board to challenge the presence of an unmanaged prairie dog colony but clarifies that the request be in writing and received by the county board within 15 days from the date of the notice served on the landowner. The landowner's right to request a hearing is also made available under either type of individual notice served. Also, the amendment retains a right of a landowner to protest the amount of any charge or fine imposed by filing a protest with the board but clarifies that the protest be in writing and filed within 15 days of learning of the amount.
- Retains provisions of the introduced bill for procedures the county may follow if a landowner fails to comply with an individual notice or fails to request a hearing by causing management actions to be taken on the subject property with ultimate recovery of the costs as a special assessment against the property if necessary or by prosecution of the fine penalty that may be imposed. The amendment primarily clarifies that county enforcement activities may commence upon expiration of the 60-day period specified in the individual notice.
- Retains without change from the introduced bill that costs of prairie dog management upon lands owned or controlled by state or subdivisions to be paid by same out of appropriated funds

- Amends §§81-2,236 and 81-2,237 of animal damage control authorities assigned to the Director of Agriculture to:
 - Remove any ambiguity whether animal damage control authorities applies to control of black-tailed prairie dogs.
 - State legislative intent to appropriate \$100,000 to Animal Damage Control Fund for FY's 05-06 and 06-07
 - Authorize that expenditures from the fund for cooperative agreements with the USDA-Wildlife Services and counties may be to address specific animal damage control problems, including that up to \$25,000 of funds available may be expended for FY's 05-06 and 06-07 as aid to counties that have adopted a prairie dog management program.

Senator Bob Kremer, Chairperson